merce is not to be denied. To the contrary, foreign corporations can not be excluded from suing in the state courts upon transactions of interstate commerce. *Cone Export and Com. Co.* v. *Poole*, 41 S. C. 70; *Miller* v. *Goodman*, 91 Tex. 41; *Pasteur Vaccine Co.* v. *Burkey*, 22 Tex. Civ. App. 232, 54 S. W. Rep. 804; *Gale Mfg. Co.* v. *Finkelstein*, 22 Tex. Civ. App. 241, 54 S. W. Rep. 619; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; CLARK & MARSHALL ON PRIVATE CORPORATIONS, § 845, e; COOK ON CORPORATIONS, § 696-§ 700. In *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, it was held that a similar statute, as applied to the facts in that case, did not interfere unlawfully with interstate commerce. But the decision rested upon the fact that the contract called for carrying on of business in Wisconsin, and it was left to chance whether the commerce should go outside of the state.

CORPORATIONS, INSOLVENT—PREFERRING CREDITORS—DIRECTORS.—The defendant, an insolvent corporation, executed a deed to Harry L. Arnold, as trustee for certain creditors, and also confessed judgment in favor of certain preferred creditors. The plaintiff sought to cancel and set aside as fraudulent the deed executed to Arnold, and the judgments confessed, and asked for the appointment of a receiver. *Held*, that an insolvent manufacturing corporation may lawfully prefer bona fide claims due to creditors who are directors and officers of the corporation, though the vote of one or more such directors is required to pass the resolution authorizing such preference. *City National Bank* v. *Goshen Woolen Mills Co. et al.* (1904), — Ind. —, 71 N. E. Rep. 652.

In this decision the court follows the precedent laid down in *Nappannee Canning Co.* v. *Reid, Murdock Co.*, 159 Ind. 614, 59 L. R. A. 199. The holding very well illustrates the late harmful tendency of many courts practically to guarantee directors that their claims against an insolvent corporation shall be paid, disregarding all others. *Warfield* v. *Marshall County Canning Co.*, 72 Iowa 666, 34 N. W. Rep. 467; *Blair* v. *Illinois Steel Co.*, 159 Ill. 350, 42 N. E. Rep. 895. This is clearly against the former great weight of authority, and is strongly condemned by many writers. See 10 CYC. 1254; MORAWETZ ON PRIVATE CORPORATIONS, § 787; COOK ON CORPORATIONS, § 692; CLARK & MARSHALL ON PRIVATE CORPORATIONS, § 787, b. In many decisions, even those courts which have repudiated the trust fund doctrine still maintain that the director of an insolvent corporation stands in a fiduciary relation to the creditor, and can take no undue advantage to himself. *Olney et al.* v. *The Conanicut Land Co.*, 16 R. I. 597, 27 Am. St. Rep. 767. Yet if the courts continue to change position as rapidly as during the past few years, no further question will be raised as to the power of directors of insolvent corporations to prefer themselves as creditors.

DAMAGES—BREACH OF CONTRACT.—In a proceeding to foreclose a thresher's lien for threshing certain grain consisting of wheat, oats and barley, the answer raised no issue as to the quantity of grain threshed by plaintiff or the amount of the lien, but set up a counterclaim for damages sustained by plaintiff's breach of contract to thresh defendant's flax, by reason of which, during the delay in obtaining another thresher, part of the flax was destroyed by rain. *Held*, that these damages were not recoverable. *Hayes* v. *Cooley* (1904), — N. D. —, 100 N. W. Rep. 250.

The findings in this case merely present the breach of an ordinary contract to thresh grain. The court found defendants were not entitled to recover loss caused by a storm over which plaintiff had no control. The weight of opinion seems to hold with the principal case, that such loss was not in the contemplation of the parties as the natural and probable result of the breach of such a contract. *Posser* v. *Jones,* 41 Iowa 674; *McCormick* v. *Vanatta,* 43 Iowa 389. The case of *Smeed* v. *Ford,* 28 L. J. Q. B. 178, 1 E. & E. 602, is, however, directly in conflict with these and with the principal case, and seems to be supported by sound reasoning.

DAMAGES—MENTAL SUFFERING UNCONNECTED WITH PHYSICAL.—Action for damages alleged to have been sustained by plaintiff because of defendant's failure to deliver a telegram; the complaint alleging that by reason of defendant's negligence in not delivering said telegram the plaintiff suffered great worry and distress of mind. The answer denied the allegation, and set up as a defense the usual statement printed on a telegram blank, that defendant is not liable for any unrepeated message beyond the amount received for sending the same. *Held,* that plaintiff is entitled to recover damages for mental suffering in such a case. *Barnes* v. *Western Union Tel. Co.* (1904),— Nev. —, 76 Pac. Rep. 931.

It was contended that defendant had secured itself by contract against the recovery of damages in case of delay or nondelivery if the message was not repeated. The complaint, however, was not for mistake or error in the message, but for failure to deliver it. If such a stipulation were given the force of a contract, the defendant is under no obligation to deliver any unrepeated message. *Tel. Co.* v. *Henderson,* 89 Ala. 510; *Smith* v. *Tel. Co.,* 83 Ky. 104; *Hibbard* v. *Tel. Co.,* 33 Wis. 558. This stipulation did not protect defendant against liability for damages which such repetition could have no tendency to prevent. *Fleischner* v. *Pac. Postal Tel. Co.,* 55 Fed. Rep. 738. The court reasoned that if mental suffering accompanied by physical suffering can and must be estimated, cannot and should not mental suffering unaccompanied by physical suffering be estimated? Where mental suffering is the result of some wrongful act it may be taken into consideration in assessing damages for the wrong, even though there may be no physical injury. *Davis* v. *Tacoma Ry. and Power Co.,* 77 Pac. Rep. 209. A dissenting opinion, however, holds that the mental anguish was not the natural or necessary consequence of the breach of the contract, and that defendant cannot be held liable for remote contingent consequences. See 2 MICHIGAN LAW REVIEW, 150, 420, 421, 641, 642.

DEEDS—DELIVERY TO A THIRD PERSON—REQUISITES.—A, the owner of a tract of land, made eleven deeds thereof to his children, in one of which appellant, X, was grantee of a specific part. The consideration for this was shown to be appellant's care of A during his old age, together with certain book accounts due appellant's husband, from which, it was agreed, there should be no more trouble. The eleven deeds, of which that in suit was one, were given to B, a stranger, with written instructions from A "at his death to deliver them to each one of the heirs." Subsequently, at A's request, B returned the deeds, together with the paper accompanying them, and after